

### **REMARKS**

In response to the examiner's final rejection, as delineated within the claims, certain claims have been amended, three new claims have been added, certain claims have been canceled, and one claim, claim 31, has been withdrawn.

Preliminarily, it is noted that this revised submission as an RCE responds to the October 29, 2004 Notice of Non-Compliant Amendment that followed an RCE submitted on August 6, 2004 in response to the February 6, 2004 final Office Action. Steven Horowitz, attorney for Applicant, spoke to Mr. Steven Marcus, a Special Programs Examiner in technology Center 3700 of the U.S.P.T.O. (571-272-4368) and we discussed the MPEP 706.07(h) VI in relation to the Notice of Non-Compliant Amendment. We agreed that the original RCE amendment submission was a bona fide attempt to provide a complete reply to a final office action since the submission for the RCE was an amendment that was allegedly not in compliance with 37 CFR 1.121 in that not all of the status identifiers of the claims were correct. Thus a response to the Notice of Non-Compliant Amendment needs to be submitted within one month. Thus the instant revised Amendment as a submission for the RCE is timely since it is within one month of October 29, 2004. See MPEP 706.07(h) VI(a).

Below I have reproduced the "Remarks" section of the original RCE with some minor additions. Prior to that, I explain that the status identifiers have been further changed. Claims 1-12, 17-20, 25-30, 33 and 36 have been canceled rather than withdrawn and hence their text has been omitted in accordance with Rule 1.121(c)(4). Furthermore, claim 31 has been withdrawn rather than "not entered".

It is noted generally that none of the references cited by the examiner teach or suggest the invention as claimed in independent claims “13”, “21” and “32”. None of them teach or suggest an easily removable thermal preservation insert disk combined with a plastic food container where the disk conforms exactly to the bottom and side walls of the plastic food container, thereby preventing food from penetrating between the surfaces, which penetration would inter alia (i) make cleaning of the disk difficult, (ii) use up space and hence decrease the space-saving advantages of the disk and (iii) and reduce the thermal preservation effect of the disk, especially if food under the disk tilted the disk.

For example, Peterson, cited by the examiner, not only has grooves 19 recessed into the interior surface 13 but also has a space for the lid to be grasped, as best appreciated in FIG. 1 of Peterson, U.S. Patent No. 4,577,474. In addition, in Simko, 4,197,890, the outer wall of the container is flexible so the disc-like ice pack unit 70 will not be able to conform exactly to the container’s outer wall. The other references cited by the examiner also do not teach an easily removable thermal preservation insert disk combined with a plastic food container where the disk conforms exactly to the bottom and side walls of the plastic food container, thereby preventing food from penetrating between the surfaces,. For example, several of the prior art cited by the examiner (e.g. Gordon, McGraw, Telkes, etc.) do not teach or suggest a disk that is removable easily. In other prior art cited by the examiner (e.g. Heverly, etc.) the insert disk does not conform exactly to the bottom and the wall of the plastic food container.

Furthermore, in numerous other patent references cited by the examiner (e.g. Conklin (lid), Bair (shelf), etc.), the disk insert is not even located on the bottom of the plastic food container. In Conklin, for example, it is located not on the bottom of the container but in the lid, in Bair it is located on the shelf not on the bottom of the container.

Thus none of the references cited by the examiner alone or in combination teach an easily removable thermal preservation insert disk combined with a plastic food container where the disk conforms exactly to the bottom and side walls of the plastic food container. Thus none of the prior art has the advantages that the present invention has, including preventing food from penetrating between the surfaces, which penetration would inter alia (i) make cleaning of the disk difficult, (ii) use up space and hence decrease the space-saving advantages of the disk and (iii) and reduce the thermal preservation effect of the disk, especially if food under the disk tilted the disk.

New claims 38-40 are dependent on claims 13-15 and simply recite that the “thermal preservation fluid is inaccessible”. This is an additional feature that distinguishes the insert in the combination of the present invention from prior art references cited by the examiner in which the insert could be opened and the fluid removed.

The Description was amended simply to make clear that the use of the word “disk” in the claims is not intended to be limited to a shape that is round.

Since all of the foregoing amendments are understood to place the application in condition for allowance, their entry is submitted to be appropriate and is respectfully requested. Accordingly, it is respectfully requested that claims 13-16, 21-24, 32, 34, 35 and 37-40 are distinguishable over the prior art and should be allowed.

A request for extension of time in which to respond to the February 6, 2004 Office Action within the third month, together with the appropriate fee for a small entity was previously submitted to accompany this proposed Amendment in the original August 6, 2004 RCE submission. In addition, a check for \$887 was also previously submitted with the RCE covering the basic filing fee of \$385 for the RCE, \$475 for the extension of time request and \$27 for three

new dependent claims. This check was cashed by the Patent Office in August 2004.

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Respectfully submitted,

A handwritten signature in black ink, appearing to read 'S. Horowitz', is written over the printed name.

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